

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

STEVE SHAYA,

Plaintiff,

Case No. 14-cv-11112

Hon. Matthew F. Leitman

v.

DAVID BELCASTRO, et al.,

Defendants.

**ORDER DENYING DEFENDANT DAVID BELCASTRO'S MOTION FOR
SUMMARY JUDGMENT (ECF #35) WITHOUT PREJUDICE AS MOOT
AND PERMITTING PLAINTIFF STEVE SHAYA TO FILE A FOURTH
AMENDED COMPLAINT**

Defendant David Belcastro ("Defendant Belcastro") has filed a motion labeled as a "Motion for Summary Judgment." (See ECF #35.) The motion is actually one to dismiss Plaintiff Steve Shaya's ("Plaintiff") Third Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). The motion is fully briefed. During a telephonic status conference with counsel for all parties on August 7, 2014, the Court indicated that it had reviewed the parties' briefs and that while it had not yet reached any final conclusions, its initial inclination was that Defendant Belcastro had raised some legitimate concerns as to the sufficiency of Plaintiff's allegations against Defendant Belcastro. The Court informed counsel that even if it were eventually to conclude that the current allegations against

Defendant Belcastro were insufficient, the Court would afford Plaintiff's counsel an opportunity to further amend the governing Complaint in an effort to address any pleading deficiencies. After the discussion with counsel, the Court has determined that the most expeditious way to address the pleading issues with respect to Defendant Belcastro is as follows:

1. The Court directs Plaintiff to file a Fourth Amended Complaint within fourteen days of this Order. The amendments in the Fourth Amended Complaint shall be limited to the addition of factual allegations against, and related to, Defendant Belcastro. The Court strongly advises Plaintiff to review Defendant Belcastro's arguments concerning the pleading deficiencies in the Third Amended Complaint and to include in the Fourth Amended Complaint each and every fact known to Plaintiff and related to Defendant Belcastro that address the alleged deficiencies. In light of this opportunity to amend, the Court will be far less inclined to allow further amendment if the Court determines that the allegations against Defendant Belcastro in the Fourth Amended Complaint are deficient.

2. Because the Court is directing Plaintiff to file amended allegations with respect to Defendant Belcastro, the Court denies Defendant Belcastro's pending motion to dismiss (ECF #35) as moot. This denial is without prejudice, and Defendant Belcastro may file a motion to dismiss the claims against him in the Fourth Amended Complaint if he believes that he has a good faith basis to do so.

Defendant Belcastro shall file such a motion within twenty-one days after the filing of the Fourth Amended Complaint. If Defendant Belcastro does not file such a motion (or some other motion in lieu of an answer), he shall answer the Fourth Amended Complaint within twenty-one days after it is filed.

3. Defendant Belcastro shall not be deposed until at least seven days after the latter of (a) a ruling by this Court on a motion by Defendant Belcastro to dismiss the Fourth Amended Complaint or (b) the filing of an answer by Defendant Belcastro to the Fourth Amended Complaint.

IT IS SO ORDERED.

s/Matthew F. Leitman

MATTHEW F. LEITMAN
UNITED STATES DISTRICT JUDGE

Dated: August 7, 2014

I hereby certify that a copy of the foregoing document was served upon the parties and/or counsel of record on August 7, 2014, by electronic means and/or ordinary mail.

s/Holly A. Monda

Case Manager
(313) 234-5113